COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

(1) Writ Petition No.34 of 2005 (S/B)

Dinesh Chandra Purohilt

.....Petitioner

Vs.

State of Uttaranchal through Chief Secretary and another

.....Respondents

(2) Writ Petition No.32 of 2005 (S/B)

Kailash Chandra Towari

.....Petitioner

Vs.

State of Uttaranchal through Chief Secretary and another

.....Respondents

(3) Writ Petition No.33 of 2005 (S/B)

Madan Mohan Bhardwaj

.....Petitioner

Vs.

State of Uttaranchal through Chief Secretary and another

.....Respondents

(4) Writ Petition No.67 of 2005 (S/S)

Roop Chand Gupta

.....Petitioner

Vs.

State of Uttaranchal through Chief Secretary and another

.....Respondents

(5) Writ Petition No.70 of 2005 (S/S)

Ashutosh Bahuguna

.....Petitioner

Vs.

State of Uttaranchal through Chief Secretary and another

.....Respondents

Approved for reporting

~~Not approved for reporting.~~

Date: December 20, 2006

(P.C. Verma, J.).

(B.C. Kandpal, J.)

Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Civil Writ Petition No. 34 of 2005 (S/B)

Dinesh Chandra Purohit
and 11 others. ..... Petitioners

Versus

1. State of Uttaranchal through Chief Secretary Government of Uttaranchal, Civil Secretariat, Dehradun.
2. Secretary, Secretariat, Administration Department, Government of Uttaranchal, Dehradun.

..... Respondents.

(2) Civil Writ Petition No. 32 of 2005 (S/B)

Kailash Chandra Tiwari
and 7 others. ..... Petitioners

Versus

1. State of Uttaranchal through Chief Secretary Government of Uttaranchal, Civil Secretariat, Dehradun.
2. Secretary, Secretariat, Administration Department, Government of Uttaranchal, Dehradun. ..... Respondents.

(3) Civil Writ Petition No. 33 of 2005 (S/B)

Madan Mohan Bharadwaj
and 7 others. ..... Petitioners

versus

1. State of Uttaranchal through Chief Secretary Government of Uttaranchal, Civil Secretariat, Dehradun.
2. Secretary, Secretariat, Administration Department, Government of Uttaranchal, Dehradun. ..... Respondents.

(4) Civil Writ Petition No. 67 of 2005 (S/S)

Roop Chand Gupta S/o late Shri K. Ram
Presently posted as Additional P.S. to
Additional Secretary, Finance, Secretariat,
Dehradun. ..... Petitioner

Versus

1. State of Uttaranchal through Chief Secretary, Administration.
2. Secretary, Sachivalaya Prashasan, Uttaranchal Shasan, Dehradun.

..... Respondents.

(5) Civil Writ Petition No.70 of 2005 (S/S)

Ashutosh Bahuguna S/o late Shri Chakradhar Bahuguna, Presently Posted as Additional P.S. to Hon'ble Minister Transport and Labour, Secretariat, Dehradun. ..... Petitioner

Versus

1. State of Uttaranchal through Chief Secretary, Administration.
2. Secretary, Sachivalaya Prashasan, Uttaranchal Shasan, Dehradun.

..... Respondents.

For petitioners:- Sri Sudhanshu Dhulia, Senior Advocate
Sri Vipul Sharma Advocate,
Sri B.P. Nautiyal Advocate
Sri Hari Mohan Bhatia Advocate

For Respondents: -Learned Standing Counsel.
Sri Manoj Tiwari Advocate
Sri P.S. Danu Advocate.

Date: December 20, 2006

Hon'ble P.C.Verma,J.
Hon'ble B.C.Kandpal,J.

(Delivered by Hon'ble P.C. Verma, J.)

In all these writ petitions, the petitioners have challenged the validity of Sub-Rule (2) of Rule 6 of "*Uttaranchal Sachivalaya Vaiyaktik Sahayak, Avar Varg Sahayak, Sahayak Lekhakar, Tankak, Anusevak Ke Pado Par Samvilin Niyamavali 2002"* on the ground that sub-rule (2) of Rule 6 of the aforesaid Rules is violative of Article 14 of Constitution of India.

2. The ground taken by the petitioners is based on the facts that upon the creation of the Uttaranchal State, the Government of Uttaranchal made requisition of staff from the various departments and corporations of Uttaranchal to the Secretariat. The petitioners offered their services for the post of Personal Assistants (P.As.) and finally their services were absorbed in the Secretariat under "*Uttaranchal Sachivalaya Vaiyaktik Sahayak, Avar Varg*

Sahayak, Sahayak Lekhakar, Tankak, Anusevak Ke Pado Par Samvilin (Triteeya Sansodhan) Niyamavali 2002" (hereinafter referred to as "the Rules") which are framed under Article 309 of the Constitution of India. It is alleged by the petitioners that Rule 6(1) states that the date of service of an employee, such as present petitioners in secretariat service will be the date on which the service of such employee was absorbed/amalgamated in the Secretariat service. Rule 6 (2) of the said Rules states that all the employees who will so absorbed on the particular post will be junior to the junior most employee of the existing secretariat service. **Rule 6 (2) further states that inter se seniority of these absorbed employees will be determined from the date of the initial appointment and if the date of initial appointment is same, then inter se seniority of such employees shall be determined on the basis of their pay scale(grade) in their parent department.**

3. The services of the petitioners were also confirmed as Personal Assistants vide order dated 28.09.2004. It is alleged that the Government of Uttaranchal issued a seniority list in respect of the Sachivalaya employees making the pay scale sole criteria for determining the seniority, which is unreasonable and inequitable, and are violative of Article 14 of the Constitution of India. The petitioners raised objection to the list claiming seniority on various grounds, but the Government has rejected their representation by common order dated 08.12.2004 stating that the inter se seniority has to be fixed in accordance with Rule 6 of the said Rules.

4. The respondents Nos.1 and 2 in all these writ petitions have stated in the counter affidavit that in the

Rules, the provision of option to be absorbed was available to the employees under Rule 8 of the 'Rules'. The option was given to the employees either to go to their parent departments, if they do not wish to continue in the service of Secretariat or to opt for absorption under the Rules. The petitioners opted to be absorbed in the services of Secretariat under the Rules. They did not raise any objection to their absorption in the Secretariat service, which indicates that they have accepted the absorption with the conditions laid down in Rule 6 of the said Rules. It is also alleged that no one of such employee was compelled to work in the Secretariat under compulsion. It is also alleged by these Respondents that Rule 7 of the Uttaranchal Government Servant Seniority Rules, 2002 *(hereinafter will be referred to as 'Seniority Rules, 2002')* specifically provides regarding the fixation of inter se seniority, where the promotion from more than one feeding cadre is made, the proviso appended to Rule 7 of Seniority Rules, 2002 will be applicable. The said proviso appended to Rule 7 is being reproduced as under:-

> **"Provided that where the pay scales of feeding cadre are different, the persons promoted from the feeding cadre having higher pay scales shall be senior to the persons promoted from the feeding cadre having lower pay scales."**

In sub-rule (2) of Rule 6 of the Rules, the similar provisions have been made. Sub-rule (2) of Rule 6 of the Rules is not unreasonable and violative of Article 14 of Constitution of India.

5. A chart has been furnished showing pay scales of petitioners in their parent department and pay scales of Personal Assistants of Uttaranchal Government Secretariat. It will be useful to reproduce the chart showing the difference of pay scales of the Personal Assistant in their

parent department vis-à-vis Personal Assistants in the Secretariat of the Uttaranchal Government on which the petitioners have been absorbed.

6. The names of all the petitioners in Writ Petitions (S/B) Nos.32 of 2005, 33 of 2005, 34of 2005, 67of 2005 and 70 of 2005 are given below in one order and in the order of the writ petitions.

Sl. No.	Name of the petitioners	Parent Department	Post on which they were working	Date of appointment in Parent Department	Pay scale in which they were working	Educational qualification in Parent Department	Next pay scale in the parent Deptt	Post on which they have been absorbed in the Secretariat	Pay Scale on which they have been absorbed
1	2	3	4	5	6	7	8	9	10
1-	Kailash Chandra Tewari	District Inspector of Schools, Pithorgarh	Stenographer	17.10.88	4000-6000	Intermediate and 80 w.p.m. in Hindi Shorthand	5000-8000	Personal Assistant	5500-9000
2-	Mohan Lal Dobhal	D.M. officer, Dehradun	Stenographer	18.9.79	4500-7000	-do-	5000-8000	Personal Assistant	5500-9000
3-	Harish Chandra Pandey	District Inspector of Schools, Dehradun	Stenographer r	26.8.86	-do-	-do-	5000-8000	Personal Assistant	5500-9000
4-	Dinesh Chandra Gairola	C.D.O. Office, Pauri	Stenographer	1.7.78	-do-	-do-	5000-8000	Personal Assistant	5500-9000
5-	Grirish Chandra Gaira	Rural Engineering Service,Dehra dun	Stenographer	28.1.85	-do-	-do-	5000-8000	Personal Assistant	5500-9000
6-	Digpal Singh Rawat	A.D.M. Office, Joshimath	Stenographer	18.1.80	-do-	-do-	5000-8000	Personal Assistant	5500-9000
7-	Rajbala Tomar	Public Security Department, Dehradun	Stenographer	26.4.78	-do-	-do-	5000-8000	Personal Assistant	5500-9000
8-	Mohan Prasad Khansali	Mechanical Tools & Stores Deptt-I, Irrigation Deptt., Dehradun.	Stenographer	5.5.73	5500-8000 Promotional pay scale Original pay scale 4000-6000	-do-	5000-8000	Personal Assistant	5500-9000
9-	Modan Mohan Bhardwaj	S.P.O. Prosecution Deptt. Dehradun	Stenographer	1.5.81	-do-	-do-	5000-8000	Personal Assistant	5500-9000
10-	Shobha Bhatt	Competent Authority, Urban Land Demarcation Dehradun	Stenographer	12.7.76	-do-	-do-	5000-8000	Personal Assistant	5500-9000
11-	Sab Singh Negi	District Manager (Industries) Dehradun	Stenographer	14.10.80	-do-	-do-	5000-8000	Personal Assistant	5500-9000
12-	Sudhir Kumar Agarwal	Tourism Directorate, Dehradun	Stenographer	18.4.81	4000& 6000	-do-	5000-8000	Personal Assistant	5500-9000
13-	Suraj Singh Agarwal	Project Officer (Agriculture) Tehri	Stenographer	31.5.87	5000-8000 Promotional pay scale Original pay scale 4000-6000	-do-	5000-8000	Personal Assistant	5500-9000

Sl. No.	Name of the petitioners	Parent Department	Post on which they were working	Date of appointment in Parent Department	Pay scale in which They were working	Educational qualification in Parent Department	Next promotional pay scale in the parent Deptt	Post on which they have been absorbed in the Secretariat	Pay Scale on which they Have been absorbed
14-	M.S. Khatri	Addl. Director Animal Husbandry Deptt., Gopeshwar, Chamoli	Stenographer	1.10.77	-do-	Intermediate and 80 w.p.m. in Hindi Shorthand	5000-8000	Personal Assistant	5500-9000
15-	J.C. Pant	Regional Office, Tourism Deptt., Mussoorie	Stenographer	1.7.78	-do-	-do-	5000-8000	Personal Assistant	5500-9000
16-	Jagdish Prasad Sharma	Trade Tax Deptt., Dehradun	Stenographer	18.8.81	-do-	-do-	5000-8000	Personal Assistant	5500-9000
17-	Dinesh Chandra purohit	Ganga Valley Water Electricity Project, Dehradun IrrigationDeptt	Stenographer	20.7.71	5000-8000	-do-	5000-8000	Personal Assistant	5500-9000
18-	Subhash Chand Panwat	Tons Camp Development Zone, Irrigation Deptt. Dehradun	Stenographer	4.8.78	5000- 8000 Promotional pay scale Original pay scale 4000-6000	-do-	5000-8000	Personal Assistant	5500-9000
19-	Virendara Singh Khairola	Lakhvar-Vyasi Development Division-I, Irrigation Deptt., Dehradun	Stenographer	2.8.78	-do-	-do-	5000-8000	Personal Assistant	5500-9000
20-	Hari Prasad Belwal	Lakhvar-Vyasi Development Division-II, P.O. Irrigation Deptt., Dehradun	Stenographer	22.12.78	-do-	-do-	5000-8000	Personal Assistant	5500-9000
21-	Ramesh Chand Bisht	Tubewell Division, Irrigation Deptt. Dehradun	Stenographer	7.3.79	-do-	-do-	5000-8000	Personal Assistant	5500-9000
22-	Om Prakash Pandey	Irrigation Development Dividion-3, Sringar, Garhwal	Stenographer	8.8.79	-do-	-do-	5000-8000	Personal Assistant	5500-9000
23-	Harsh Vardhan Joshi	Maneribhali Stage-II, Irrigation Zone, Uttarkashi	Stenographer	1.6.75	-do-	-do-	5000-8000	Personal Assistant	5500-9000
24-	Haridutt Devtala	Lakhvar Dam Development Division-4 Irrigation Deptt., Dehradun	Stenographer	14.4.82	-do-	-do-	5000-8000	Personal Assistant	5500-9000
25-	Ashok Kumar	Dak Pathar Basti & Communication Division, Irrigation Deptt.	Stenographer	8.8.78	-do-	-do-	5000-8000	Personal Assistant	5500-9000
26-	Bhuwan Chand Joshi	Regional Division, PWD, Rudrapur	Stenographer	17.3.86	-do-	-do-	5000-8000	Personal Assistant	5500-9000
27-	Vani Vilas Uniya	Rural Engineering Services Office, Chamoli	Stenographer	16.8.86	-do-	-do-	5000-8000	Personal Assistant	5500-9000
28-	Dhyan Singh	Small Irrigation Deptt., Dehradun	Stenographer	6.3.82	-do-	-do-	5000-8000	Personal Assistant	5500-9000
29-	Rup Chand Gupta	Water Corporation, Dehradun	Stenographer	28.11.73	4500-7000	-do-	5000-8000	Personal Assistant	5500-9000
30-	Ashutosh Bahuguna	G.M.V.N. Dehradun	Stenographer	18.4.78	1940-2900	-do-	6500-10500	Personal Assistant	5500-9000

7. The newly impleaded respondents have also filed counter affidavit stating therein that the provision contained in Rule 6 of the Rules is just and equitable. No prejudice is caused to anyone by the said provision. Provision for sub-rule (2) of Rule 6 of the Rules is reasonable and is not violative of Article 14 of Constitution of India.

8. We have heard Sri S.Dhulia, Sr. Advocate, learned counsel for the petitioners, Sri K.P. Upadhyaya, Id. standing counsel for the State and Sri Manoj Tewari, Id. counsel for the private respondents.

9. In view of the facts indicated in the chart, since the petitioners' date of initial appointments as Stenographers in the parent department is different, therefore, the petitioners are placed in the seniority list of Personal Assistants/Private Secretaries of Secretariat as per provisions contained in sub-rule (1) of Rule 6 of the Rules. The petitioners have no locus standi to challenged sub-rule (2) of Rule 6 of the Rules as they cannot be said to be aggrieved by the said provision.

10. The Personal Assistant of the Secretariat are appointed in consultation with the Public Service Commission and they are promoted to the post of Private secretaries while the petitioners' mode of recruitment is Departmental Selection Committee, therefore, their next higher pay scale is given in the Chart quoted above. Hence, the petitioner and others Stenographers who were taken in the exigency of work as Personal Assistants in the Secretariat constituted a different class than that of Personal Assistants in the Secretariat and as such they

cannot claim parity with the Personal Assistants of the Secretariat in any manner whatsoever.

11. The Rules framed under Article 309 of Constitution of India relating to conditions of service and seniority is a policy matter which falls within the domain of Executives. The judicial review of the policy is only permitted to a limited extent as to whether the policy is reasonable or not. Now we may proceed to refer to the dictums of the Hon'ble Apex Court with regard to judicial review of seniority.

12. In the case of *Devi Prasad & others Vs. Govt. of Andhra Pradesh and others, reported in 1980 Supp.S.C.C. 206. the Hon'ble Apex Court has held as under:-*

> *"It is a matter of government policy to decide what weightage should be given as between two categories of government servants rendering somewhat similar kind of service. Mere hardship without anything arbitrary in the rule does not call for judicial intervention, especially when it flows out of a policy which is not basically illegal. Moreover, the government, in producing contentment and efficiency in its servants, especially in strategic areas like engineering, may have to evolve a flexible policy which will not strike a group as inflicting hardship on them. A sense of justice must permeate both the groups."*

The same principle of law been further reiterated by the Hon'ble Apex Court in the cases of "*State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others" (1981) 4 S.C.C. 130. V.T. Khanzode & others Vs. Reserve Bank of India and another (1982) 2 S.C.C. 7, R.S. Makashi and others Vs. I.M. Menon & others (1982) 1 S.C.C. 379, , Union of India and others Vs. S.L. Dutta & another (1991) 1 S.C.C. 505, Prafulla Kumar Das and others Vs. State of Orissa and others (2003) 11 S.C.C. 614.*

13. It has been settled in the case of Chandrakant (Supra) that "*the narrow and limited field within which the supervisory jurisdiction of the court can operate is the only question whether the principles agreed upon have been properly taken into account".* In the case of V.T. Khanzode (Supra), it was held by Hon'ble Apex Court that "*Private interest of employees of public undertakings cannot override public interest and an effort has to be made to harmonize the two considerations. No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these. Vested interests are prone to hold on their acquisitions."* In the case of *Union of India and others Vs. Dr. S. Krishna Murthy and others (1989) 4 S.C.C.689,* it has also been held by Hon'ble Apex Court that "*when a particular rule conferring benefits on a particular group of government servants in recognitions of their past services in the Army, has been in operation for over twenty years, the Supreme Court will be very slow to interfere with the rule and deprive such group of government servants of the benefits so conferred on them. This, however, does not mean that the Court will shut its eyes even though such rules are illegal and are violative of Articles 14 and 16."*

14. The judicial review is essence of Rule of Law. Under Article 16 of Constitution of India, there shall be equality of opportunity in matters of public employment. Article 16 of Constitution of India is one of the many incidents of concept of equality as guaranteed under Article 14 of Constitution of India. Any classification in the matter

of employment has to be reasonable. In the present case, employees from different departments were initially attached to Secretariat and thereafter the Rules were framed for their absorption in Secretariat service. In such cases, the policy was essentially required to be framed for determining the equation of posts and further for inter-se seniority. Framing of policy under the exigency of services is essentially within the domain of Government alone. It may not be possible while framing policy in these matters that no hardship may be caused to any of the employees but that alone may not be a ground to challenge such a policy. The scope of judicial review in such matters is restrictive. The Court may not sit as a Court of Appeal to determine as to what "**ought to have been the policy**", especially when the policy is reasonable and not arbitrary.

15. It is argued on behalf of the petitioners that sub-rule (2) of Rule 6 of the Rules is violative of Article 14 of Constitution of India because pay scale has been made sole criterion for determination of seniority by this sub-rule. It is argued that pay scale cannot be sole criteria for determining the seniority. In support of this argument, the principle as laid down in the case of "***Sub-Inspector Rooplal and another Vs. Lt. Governor through Chief Secretary, Delhi and others reported in (2000) 1 S.C.C. 644"*** has been referred to.

16. In Rooplal's case **(Supra)**, the Hon'ble Apex Court has followed the principles of law as laid down in the case of ***Union of India and another Vs. P.K. Roy and others reported in AIR 1968 S.C. 850***. In P.K. Roy's case (**Supra**), the Committee of Chief Secretaries have agreed that in determining relative seniority as between two persons holding posts declared equivalent to each other,

and drawn from different States, the following points should be taken into account: -

(i) Length of continuous service, whether temporary or permanent, in a particular grade; this should exclude periods for which an appointment is held in a purely stop-gap for fortuitous arrangement:

(ii) Age of the person; other factors being equal, for instance, seniority may be determined on the basis of age.

Note: It was also agreed that as far as possible, the inter se seniority of officers drawn from the same State should not be disturbed."

17. The P.K. Roy's case (**Supra**) was mainly regarding equation of posts and in Rooplal's case (**Supra**) the question was that when a deputationist has been permanently absorbed in the transferred post, is he entitled to count his substantive service in the parent department for the purpose of seniority. In that case before absorption, the deputationists were not made aware of the Rules regarding the conditions of absorptions. In the present case, the petitioners were never taken in Secretariat on deputation. They were simply attached to facilitate the functioning of Secretariat in the beginning. The petitioners have been attached from different departments having different length of service and different pay scales. The Rules regarding Secretariat services were different and the Rules governing the petitioners were different before their absorption in Secretariat services. Before absorptions, the petitioners were given the option to opt or not to opt for Secretariat service and at the time of this option, the petitioners were well aware about sub-rule (2) of Rule 6 of the Rules.

18. The equation of posts is different than the Rules determining the inter-se seniority and both cannot be considered by clubbing him together. It is urged that the past services of the petitioners should have been given weightage to but only for determining inter-se seniority, the policy in the form of the Rules has been framed. For the purpose of inter-se seniority, the length of service in a particular pay scale has been made criterion which is not unreasonable, but under the circumstances of the case, this would only have been a reasonable criteria. It is also urged that before absorption in Secretariat services, the petitioners were given option and before exercising option to be absorbed or not, the Rules were also known to them. They have opted to be absorbed in the Secretariat services, after perusal of all the rules, which are now under challenge, therefore, it is urged that the petitioners cannot challenged the Rules, now.

19. In P.K. Roy's case (**Supra**), the reasonableness of guidelines for equation of posts of merged employees from different sources was considered by the Hon'ble Apex Court and it was held to be reasonable. The guidelines were not part of the Rules framed under Article 309 of Constitution of India and these guidelines were not the guidelines laid down by the Hon'ble Apex Court in its judicial pronouncement. Therefore, those guidelines can be a guiding factor for the other States while framing the Rules relating to equation of posts. In our opinion, it cannot be a precedent under Article 141 of Constitution of India. In case of Roop Lal's (**Supra**), the Apex Court again considered the question of equation of posts and decided the validity of equation of posts on these guidelines and the office memorandum which were impugned in the writ petition.

20. In the case of P.K. Roy (**Supra**), for seniority one of the points agreed to be considered was the length of continuous service whether temporary or permanent in a particular grade. In the case of *Hari Nandan Sharan Bhatnagar Vs. S.N. Dixit and another reported in (1969) 2 S.C.C. 245,* the word "grade" was defined and elaborated by the High Court and the view of the High Court was upheld by the Hon'ble Apex Court and according to High Court, "*All officials working in the same scale of pay in a department, although holding posts with different designations, shall be deemed to be holding posts in the same grade, because their rank in the same department will be the same and equal to one another."*

21. Under the 'Rules', the pay scale in which the petitioners have been absorbed in the Secretariat service was equal to their next promotional pay scale (see the chart). Under the impugned Rules, all the employees who were attached in the Secretariat have been kept en block junior to the employee of Secretariat Services. It is only in the matter of inter-se seniority of those who have been absorbed in the Secretariat, Rules have laid down the policy. Equation of the post has never been disputed. It is not the case of the petitioners that in the matter of equation of posts, rules are arbitrary or unreasonable. In the case of "*R.K. Sethi and another Vs. Oil & Natural Gas Commission & Others (1997) 10 S.C.C. 616",* the Hon'ble Apex Court while considering the question relating to seniority in the cadre of Assistant Grade II of ONGC and promotion to higher posts of Assistant Grade I and Superintendent in ONGC, upheld the validity of these office memorandums. The Rule regarding inter-se seniority has to be seen. In the case of *Union of India and others Vs. Anil Kumar and others (1999) 5 S.C.C. 743,* the Hon'ble Apex

Court has relied upon the principles of law as laid down in the case of *R.K. Sethi (**Supra**)* wherein it was approved that "*where two or more categories have been merged, for purposes of promotions to the next higher pay scale, inter se seniority of the employees considered for promotion will be fixed on the basis of length of service put in by the individual in the respective pay scale with those in higher erstwhile scale, being treated as senior to those in the lower erstwhile scale, en bloc"* and the determination of seniority on the basis of pay scale was upheld by the Hon'ble Apex Court. In that case, the dispute was that Telex Operators who were in the hierarchy between Grade III and Grade II having a separate cadre, were merged to Assistant Grade II in accordance with the provisions made by the office memorandums. Sub-para (3) of para 5 of the memorandum relating to Tex Operators, which is quoted below:-

> *"(iii) Telex Operator – Rs 370-700 (Rs. 430-880)*
>
> *All existing employees in the category of Telex Operator will be redesignated as Assistant Grade II in the pay scale of Rs. 370-700 (Rs. 430-880). Total service rendered by the employee in the pay scale of Rs.360-640 and Rs.370-700 (Rs.430-880). Will be counted for the purpose of promotion to the pay scale of Rs.470-880 (Rs530-1060)."*

22. Para 1 of the said office memorandum related to general instructions and sub-para (viii) of para 1 related to fixation of inter-se seniority consequent upon merger of two categories which reads as follows:-

> *"(viii)* ***Fixation of inter se seniority consequent upon merger of two categories –*** *Where under R&P Regulations, 1980, two or more categories have been merged, for purposes of promotions to the next higher*

pay scale, inter se seniority of the employees considered for promotion will be fixed on the basis of length of service put in by the individual in the respective pay scale with those in the higher erstwhile scale, being treated as senior to those in the lower erstwhile scale, en bloc. Existing inter se seniority will not be disturbed."

In para 4 of the aforesaid judgment R.K. Sethi (**Supra**), it has been noticed that as a result of the merger of the cadre of Telex Operators with AG- II, the Telex Operators **in each region were placed en bloc below AG- II in the said region.**

23. Regulation 19 of the ONGC (Terms and conditions of Appointment and Service) Regulations, 1975 provides for Principles of Seniority. Clause (H) of the Regulation 19 of the said Regulations read as under:-

H. Fixation of seniority on absorption of employees from one cadre to another:- *The fixation criteria shall be taken into account in fixing seniority of employees absorbed in a cadre other than the one to which they belong:*

(i) The Commission will be free to transfer employees from one cadre to another temporarily on administrative grounds, e.g., transfer of work, non-availability of suitable men.

(ii). Such employees will retain their lien and seniority in the parent cadres and will have no right to absorption in the cadres to which they are transferred temporarily.

(iii) If, as a very special case, they are to be considered for absorption in the cadres to which they are temporarily transferred, their seniority will count only from the date of their transfer to the cadre in which they are actually working (at the time of their absorption is considered) so as not to prejudice the right and seniority of the personnel already recruited or promoted to these cadres; even those recruited and promoted to these cadre on the day the personnel from other cadre are transferred will all rank senior to the personnel transferred form the other cadres.

24. The Hon'ble Apex Court in Para 11 of the R.K. Sethi's judgment (**Supra**) upheld the fixation of seniority on

account of merger on the principle that the Telex Operator whose pay scales were below the Assistant Grade II were en bloc placed below the Assistant Grade II employees and inter se seniority was to be determined from the date of their initial appointment in a particular pay scale. Para 11 of the aforesaid judgment is reproduced hereunder:-

> "*11. On behalf of the Commission, Shri Ashwini Kumar has urged that as a result of fitment under para 5(iii) of the Executive Instructions, the cadre of Telex Operators was merged in the existing cadre of AG-II and the seniority of Telex Operators had to be fixed in accordance with para 1(viii) of the Executive Instructions read with Clause H(iii) of the Principles of Seniority. We find considerable force in this contention. As a result of the fitment policy contained in para 5(iii) of the Executive Instructions the cadre of Telex Operators had been merged in the cadre of AG-II. The word redesignated in para 5(iii) has to be read with the words two or more categories have been merged contained in para1(viii) and it can only be construed to mean that as a result of redesignation there was merger of the cadre of Telex Operators into the cadre of AG-II. The statement in para 5(iii) that the total service rendered by the employees in the pay scale of Rs 360-640 and Rs 370-700 (Rs 430-880) will be counted for the purpose of promotion to the pay scale of Rs 470-880 (Rs 530-1060) only enables the Telex Operators who have been merged in the cadre of AG-II to avail the period of service rendered by them as Telex Operators for the purpose of promotion. But the seniority in the cadre of AG-II will be governed by the provisions contained in para 1(viii) which lays down the principles of fixation of inter se seniority consequent upon merger of two categories. In para 1(viii) it is specified that for the purposes of promotion to the next higher scale, inter se seniority of the employees considered for promotion will be fixed on the basis of length of service put in by the individual in the respective pay scales with those in higher erstwhile scale, being treated as senior to those in the lower erstwhile scale, en bloc. This principle is in consonance with the principle laid down in Clause H(iii) of the Principles of Seniority prescribed under Regulation 19 of the 1975 Regulations. The said provision deals with the absorption of the employees in the cadre to which they are temporarily transferred and lays down that their seniority will be counted only from the date of their transfer to the cadre. The merger of the cadre of the*

Telex Operator had been brought about by transfer of the Telex Operators to the cadre of AG-II and their absorption in the said cadre. Their seniority will, therefore, have to be determined in accordance with Clause H(iii). We are unable to appreciate how Clause B(iii)(b) can be made applicable. The said clause relates to fixation of seniority in the matter of departmental promotees where promotions to a grade are made either from more than one grade or from the same grade divided into different cadres on regional, project or Directorate basis. The induction of Telex Operators into the existing cadre of AG-II within the same region did not involve any promotion from more than one grade or from the same grade divided into different cadres on regional, project or directorate basis. The said provision would have application in the matter of promotion of AG-I from a regional cadre to the post of Superintendent in a centralized cadre. In this context, it may also be mentioned that till 1-4-1979 the pay scales of Telex Operators were lower than those of AG-II and it was only with effect from 1-4-1979 that both have been placed on the same scale. The earlier service of the Telex Operators in a lower pay scale could not be equated with the service of regular employees in AG-I cadre in a higher pay scale. The Telex Operators were, therefore, rightly placed below the regular employees in AG-II cadre at the time of merger of the cadre of Telex Operators in the cadre of AG-II. The High Court, in our opinion, was not right in holding that the Commission had committed an error in placing the Telex Operators en bloc below regular employees in AG-II cadre when Telex Operators were brought in the cadre of AG-II."

25. The aforesaid judgment of the Hon'ble Apex Court was also relied upon in the case of Anil Kumar (**Supra**).

26. It is not that the service rendered by the petitioners in their parent departments are not being given weightage to but, as the petitioners were working in different pay scales, a classification was necessary for the purposes of their inter-se seniority. In the case of P.K. Roy's (**Supra**), the Committee of Chief Secretaries have agreed that the other factors being equal, seniority may be determined on the basis of age. It is true that except salary, other factors were common amongst Personal Assistants who have been

absorbed in Secretariat service. Further classification amongst the Personal Assistants was necessary. Had it been only length of service, it might have caused hardship to others. It is settled law that whenever such policies are formulated, it may cause hardship to some but only on grounds of such hardship, the policy may not be challenged unless it is arbitrary and unreasonable. The scope of judicial review in these matters is very limited, reasonableness has to be seen. It cannot be formulated as to what the policy "**ought to have been**". Length of service vis-à-vis pay scale has been made criteria for inter-se seniority. This criteria may not be termed to be unreasonable or arbitrary as the provisions of Rule 6 of the Rules is similar to those two provisions of the ONGC which have been upheld by the Hon'ble Apex Court in the case of *R.K. Sethi* (**Supra**) and further in the case of *Anil Kumar* (**Supra**).

27. In view of these circumstances as stated in the writ petition, there is no material on record to show that the provisions of Rule 6 of the Rules are unreasonable rather on the other hand, it was the only reasonable criteria which has been adopted. Therefore, the Rule 6 of the Rules cannot be held to be violative of Article 14 of Constitution of India. Hence the provisions of Rule 6 are held to be valid subordinate legislation.

28. The petitioners were well aware about the Rules before absorption in Secretariat. They have opted to be absorbed in Secretariat, being aware of the fact that their inter-se seniority would be determined in accordance with sub-rule (2) of Rule 6 of the Rules. Can now the petitioners be permitted to challenge the constitutionality of the Rules? (although it has already been held that the provisions of

Rule 6 of the Rules are not violative of Article 14 of Constitution of India). In the case of *Union of India and another Vs. N. Chandrasekharan and others reported in (1998) 3 S.C.C.694*, it has been held that "*It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected, by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report."* In view of the facts of the case, definitely, now the petitioners cannot challenge the validity of the Rules by which they have been absorbed in the Secretariat service and about which they were aware before absorption.

29. In view of the above, the writ petitions are devoid of merit and are hereby dismissed. No order as to costs.

(B.C. Kandpal, J.) (P.C. Verma, J.)

Rajeev Dang